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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,645	11/26/2003	Carlton Plunk	ZK522/03051	7326
27868	7590	09/23/2005	EXAMINER	
JOHN F. SALAZAR MIDDLETON & REUTLINGER 2500 BROWN & WILLIAMSON TOWER LOUISVILLE, KY 40202			REHM, ADAM C	
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/722,645	PLUNK ET AL.
	<b>Examiner</b> Adam C. Rehm	<b>Art Unit</b> 2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10 August 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-27 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 8/10/2005 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Response to Amendment filed August 10, 2005***

1. Receipt of Applicant's amendment is acknowledged.

### ***Drawings***

2. The drawings were received on 8/10/2005. These drawings are accepted.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

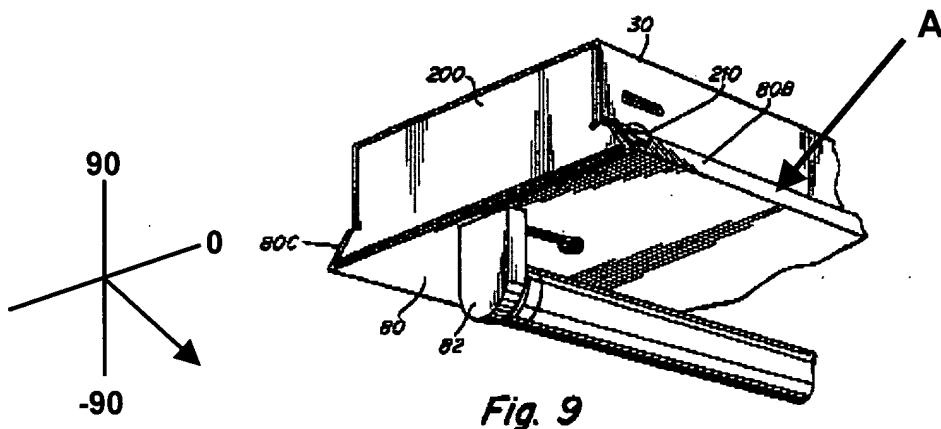
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-27 are rejected under 35 U.S.C. 102(b) as being anticipated by WEATHERS (US 6,210,019).
4. Regarding Claims 1-23 and 25-27, WEATHERS provides a retrofit unit for a fluorescent lighting fixture comprising a chamber (80A, Fig. 3) having:
  - An elongated downwardly protruding bottom wall with angled surfaces (Fig. 5 illustrates wall 80/80A/80B protruding outwardly and downwardly from the fixture 30; see below Fig. 9, Ref A) for enclosing an existing fluorescent strip light fixture (30) having an existing ballast (34);
  - A retrofit ballast (90) with power leads/wiring (102/104) in the chamber's interior surface and affixed to said downwardly protruding bottom wall (Fig. 3);
  - A plurality of opposing and downwardly extending lamp holders attached to the chamber's exterior surface, ballast and wiring (82/86);

Art Unit: 2875

- Two oppositely attached side walls forming the chamber and affixed to the bottom wall (80A/80B, see below Fig. 9, Ref. A);
- A plurality of mounting brackets removably attached to said retrofit chamber opposite said bottom side (202/204, Fig. 8); and
- A pair of opposing end caps removably attached to said side walls (200);



*Fig. 9*

5. Regarding Claim 24, WEATHERS provides a method for retrofitting a fluorescent lighting fixture, consisting essentially of the steps:

- Disconnecting power to an existing fluorescent lighting fixture (Column 3, Line 61 through Column 4, Line 4);
- Removing lamps and ballast cover from said existing lighting fixture (Column 3, Line 61 through Column 4, Line 4);
- Placing a plurality of mounting brackets (64/66) on top of said existing lighting fixture (Column 4, Lines 5-28);

Art Unit: 2875

- Hanging a retrofit unit on said plurality of mounting brackets (Column 4, Lines 5-41), wherein said plurality of mounting brackets cooperate with slots (110 and 112) in a side of said retrofit unit (Column 4, Lines 5-41);
- Connecting power and ground leads to said retrofit unit (Column 4, Lines 41-43);
- Swinging up said retrofit unit adjacent said plurality of mounting brackets; and
- Attaching said retrofit unit to said plurality of mounting brackets (Column 4, Lines 45-58).

***Response to Arguments***

6. Applicant's arguments filed 8/8/2005 have been fully considered but they are not persuasive.

7. Regarding Claims 1-22 and 25-27, Applicant has amended to incorporate a bottom wall that is "downwardly protruding." Notably, the amended term "downwardly" is not contrary to the term "outwardly." Furthermore, the cited reference, WEATHERS (US 6,210,019), has a downwardly protruding wall (See Fig. X below). Thus, the additional limitation does not render the claims sufficient to overcome the '019 reference.

8. Regarding Claim 23, Applicant argues that WEATHERS is distinguishable because it teaches removal of unneeded components of the existing light fixture, leaving the channel and wires. Notably, at least two components of the light fixture remain, the channel and wires, which are enclosed by the retrofit unit. Because Applicant does not recite a specific definition of a "fixture" within the claims, a broad interpretation of Claim 23 reads on the WEATHERS reference. *In re Van Geuns*

Art Unit: 2875

provides that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

9. Regarding Claim 24, Applicant has replaced the term “comprising” to “consisting essentially of.” Notably, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, “consisting essentially of” will be construed as equivalent to “comprising.” See, e.g. *PPG*, 156 F.3d at 1355, 48 USPQ2d at 1355. If Applicant contends that additional steps or materials in the prior art are excluded by the recitation of “consisting essentially of”, Applicant has the burden of showing that the introduction of additional steps or components would materially change the characteristics of applicant’s invention. *In re De Lajarte*, 337 F.2d 870, 143 USPQ 256 (CCPA 1964). Both WEATHERS and the claimed invention disclose removal of unneeded components. It is the position of the Examiner that there is essentially no material difference. Therefore, the previous rejection remains.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. PLUNK (US 6,752,513) discloses a retrofit light fixture that encloses an existing light fixture.

11. PLUNK (US 6,854,860) discloses a retrofit light fixture that encloses an existing light fixture.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

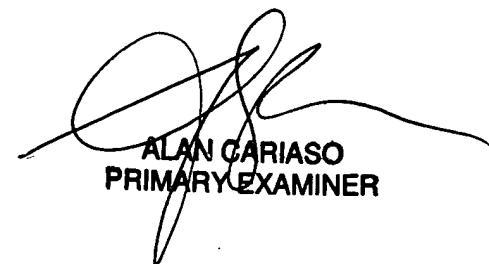
***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam C. Rehm whose telephone number is 571.272.8589. The examiner can normally be reached on M-F 9-5:30 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571.272.2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ACR  
9/14/2005



ALAN CARIASO  
PRIMARY EXAMINER